IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 199 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

KANTILAL BROS. (WOOLS)

Appearance:

MR MR BB NAYAK FOR MR MANISH R BHATT for Applicant.

NOTICE NOT RECD BACK for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 09/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following questions have been referred for our opinion in respect of the assessment year 1983-84 :

1 "Whether, the Appellate Tribunal is right in law and on facts in setting aside the order made by the C.I.T. u/s.263 of the Income-tax Act?"

2 "Whether, the Appellate Tribunal is right in law and on facts in holding that the assessee firm was entitled to registration ?"

2 We have heard Mr.B.B.Nayak, learned Counsel for the revenue. Though served, none appears for the respondent-assessee.

3 The respondent-assessee was granted registration as a partnership firm which came into existence from 1/10/1981 consisting of three partners and one minor admitted to the benefits of partnership. Out of three partners Kantilal Raichand Sanghvi was a partner in his individual capacity and also in his capacity as the karta of Kantilal Raichand Sanghvi, HUF. The Income Tax Officer granted regtistration to the firm. The Commissioner exercised powers u/s.263 of the Act for cancelling the registration on the ground that Kantilal Raichand Sanghvi was a partner in the firm in his individual capacity as well as in the capacity of karta, HUF and that other partners were sons of Kantilal, hence, the firm was not entitled to registration. The Tribunal allowed the appeal and set aside the order of CIT u/s.263 and held that the order passed by the ITO granting registration to the firm was in accordance with law and did not require any interference. Hence, this reference at the instance of the revenue.

4 Our attention has been invited to the decision of this Court in CIT vs. Budhalal Amulakhdas, 129 ITR 97. Similar controversy was raised in that case and it was held that even if a partner in a firm is having dual capacity i.e. individual capacity and also as karta of HUF such a partnership is valid and is entitled for registration. This Court has held that there is nothing in law preventing the assessee from becoming a partner in a dual capacity, one as an individual and the other as representing the HUF.

5 Following the aforesaid decision, we answer both

the questions referred to us in the affirmative i.e. in favour of the assessee and against the revenue.

6 The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(M.S.Shah,J) (D.A.Mehta,J)

m.m.bhatt